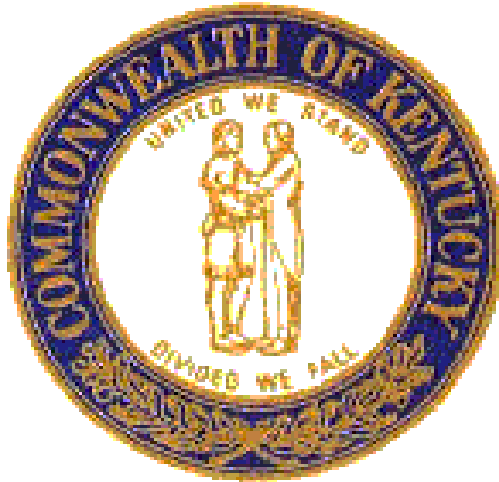


# **Kentucky Auctioneer and Auction House Operator License Law**



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**Steve Beshear  
Governor of the  
COMMONWEALTH OF KENTUCKY**

KENTUCKY BOARD OF AUCTIONEERS  
KRS Chapter 330 Auctioneers and Auction House Operators

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## **KRS CHAPTER 330**

### **AUCTIONEERS AND AUCTION HOUSE OPERATORS**

#### **330.010 Title.**

This chapter shall be known and may be cited as the Auctioneers License Law of 1962.

Effective: June 25, 2009

History: Amended 2009 Ky. Acts ch. 70, sec. 1, effective June 25, 2009. -- Created 1962 Ky. Acts ch. 251, sec. 1.

#### **330.020 Definitions for chapter.**

As used in this chapter, unless the context otherwise requires:

- (1) "Advertisement" means any written, oral, or electronic communication that:
  - (a) Offers real or personal property or any combination thereof by or at auction; or
  - (b) Promotes, solicits, induces, or offers to conduct an auction or to provide auction services;
- (2) "Apprentice auctioneer" means any person who is employed or supervised, directly or indirectly, by an auctioneer to deal or engage in any activity in subsection (6) of this section, excluding the authority to enter into an auction listing contract or to independently maintain an auction escrow account;
- (3) "Auction" means any method of sale, lease, or exchange of real property, personal property, or any combination thereof, by means of competitively increasing or decreasing bids. Any sale, lease, or exchange of real property, personal property, or any combination thereof, advertised or presented in any way by or at auction, is an auction for the purposes of this chapter;
- (4)
  - (a) "Auction house" means any commercial establishment at which personal property is regularly or customarily offered at auction, or at which personal property is customarily or regularly deposited and accepted, on consignment or otherwise, for sale at auction at a fixed location;
  - (b) "Auction house" does not mean:
    1. Those establishments which limit personal property sold in regard to thoroughbred horses or other horses or any interests therein, including but not limited to horse shares and seasons;
    2. Tobacco and fixed-base livestock markets regulated by the United States Department of Agriculture; or
    3. Fixed-base motor vehicle markets regulated by the Kentucky Motor Vehicle Commission pursuant to KRS Chapter 190;
- (5) "Auction house operator" means the individual principally or ultimately responsible for the operation of an auction house, or in whose principal interest the establishment is operated. The auction house operator is responsible for retaining a licensed auctioneer to call bids at all auctions at the auction house;
- (6) "Auctioneer" or "principal auctioneer" means any person who offers, solicits, negotiates, or attempts to offer, solicit, or negotiate an auction listing contract, sale, lease, or exchange of real property, personal property, or any other item of value, or any combination thereof, which may lawfully be kept or offered for sale, lease, or exchange, or any combination thereof, by or at auction, or who offers the same at auction and who is allowed to supervise and accepts the responsibility of sponsoring one (1) or more apprentice auctioneers;
- (7) "Board" means the Board of Auctioneers;
- (8) "Limited livestock auctioneer" means any auctioneer whose professional activities are limited to the calling of bids at the sale of livestock at fixed-based livestock yards operating under the control and guidance of the United States Department of Agriculture;
- (9) "Personal property" means any tangible or intangible property, goods, services, chattels, merchandise, commodities, or any item of value in any form or type, other than real property, which may be lawfully kept or offered for sale, exchange, or lease;
- (10) "Person" means any individual, association, partnership, corporation, limited liability company, or other business entity, including any officer, director, or employee thereof;
- (11) "Real property" means real estate in its ordinary meaning, including but not limited to timeshares, options, leaseholds, and other interests less than leaseholds of any form or type which may be lawfully kept or offered for sale, exchange, or lease; and
- (12) "Sealed bid auction" means a sealed bidding procedure which incorporates or allows for any competitive

increasing or decreasing of bids after the opening of sealed bids. A "sealed bid auction" is an auction subject to the provisions of this chapter.

Effective: June 25, 2009

History: Amended 2009 Ky. Acts ch. 70, sec. 2, effective June 25, 2009. -- Amended 1998 Ky. Acts ch. 285, sec. 1, effective July 15, 1998. -- Amended 1992 Ky. Acts ch. 344, sec. 1, effective July 14, 1992. -- Amended 1990 Ky. Acts ch. 170, sec. 1, effective July 13, 1990. -- Amended 1978 Ky. Acts ch. 80, sec. 1, effective June 17, 1978. -- Created 1962 Ky. Acts ch. 251, sec. 2.

### **330.030 Auctioneer's license required.**

- (1) It is unlawful for any person to advertise or act as an auctioneer or apprentice auctioneer within the Commonwealth, or advertise or act as an auctioneer or apprentice auctioneer of real or personal property located within the Commonwealth, without a license issued by the board.
- (2) It is unlawful for any person to advertise or act as a limited livestock auctioneer within the Commonwealth without a license issued by the board.
- (3) It is unlawful for any person to advertise or act as an auction house operator within the Commonwealth without a license issued by the board.
  - (a) An auction house operator shall be a licensed auctioneer or apprentice auctioneer if he or she acts as an auctioneer or apprentice auctioneer. If licensed as an auctioneer, an auction house operator license shall not be required.
  - (b) If an auction house operator conducts and operates more than one (1) auction house, a license shall be issued for each location, and the initial and renewal fees shall be applicable.

Effective: June 25, 2009

History: Amended 2009 Ky. Acts ch. 70, sec. 3, effective June 25, 2009. - Created 1962 Ky. Acts ch. 251, sec. 3.

### **330.040 Exceptions to KRS 330.030.**

- (1) KRS 330.030 shall not apply to:
  - (a) An auction conducted by or under the direction of any public authority or pursuant to any judicial order or decree, or to any sale required by law to be at auction;
  - (b) An auction of any real or personal property conducted exclusively by an individual who personally owns such real or personal property and who did not acquire such real or personal property for resale. This paragraph is applicable only to individuals. It does not apply to any other "person" as defined in KRS 330.020, nor does it apply to any officer, director, or employee thereof when engaged in any duties associated with those capacities.
  - (c) Any person who calls bids at the sale of livestock owned and offered at auction by 4-H Clubs or FFA Clubs or club members, or by any university operated by the Commonwealth of Kentucky;
  - (d) An auction conducted by or on behalf of any political party, church, or charitable organization, corporation, or association if:
    1. The individual conducting the sale receives no compensation and does not, by advertising or otherwise, present himself or herself as a licensed auctioneer;
    2. All real or personal property is donated and not consigned; and
    3. One hundred percent (100%) of the net proceeds of the auction are donated to the political party, church, or charitable organization, corporation, or association; or
  - (e) A student who:
    1. Is calling bids for a maximum of twenty (20) items or lots of personal property during a twenty-four (24) hour period at an auction;
    2. Is under the direct supervision of a person who is both the student's instructor from a board-approved auction education provider and a licensed auctioneer; and
    3. Receives no compensation and does not, by advertising or otherwise, present himself or herself as being a licensed auctioneer.The student and the supervising auctioneer instructor may both be liable for the student's auction-related activities.
- (2) Notwithstanding the provisions of this section, a licensee shall not be exempt from any provisions of this chapter in connection with or by reason of his participation in any sale excepted under this section.

Effective: June 25, 2009

History: Amended 2009 Ky. Acts ch. 70, sec. 4, effective June 25, 2009. -- Amended 1984 Ky. Acts ch. 407, sec. 1, effective July 13, 1984. -- Amended 1982 Ky. Acts ch. 79, sec. 1, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 80, sec. 2, effective June 17, 1978. -- Amended 1964 Ky. Acts ch. 112, sec. 1. -- Created 1962 Ky. Acts ch. 251, sec. 4.

**330.050 Board of Auctioneers -- Membership -- Qualifications -- Terms -- Compensation -- Powers -- Employees -- Funds -- Publication of list of licensees -- Administrative regulations -- Removal of board members.**

- (1) There is hereby created a Board of Auctioneers. The Governor shall appoint a board consisting of five (5) members, all of whom immediately prior to the date of their appointment have been residents of the Commonwealth of Kentucky for five (5) years, and four (4) whose vocation for a period of at least five (5) years has been that of an auctioneer. One (1) member shall be a citizen at large who is not associated with or financially interested in the practice or business regulated. The term of the members of the board shall be for three (3) years and until their successors are appointed and qualified. Members to fill vacancies shall be appointed for the unexpired term.
- (2) At no time shall there be more than two (2) auctioneer members of the same political party on the board. Whenever there is an auctioneer vacancy on the board, the Kentucky Auctioneer Association shall recommend to the Governor at least three (3) names for each auctioneer vacancy, and such appointment or appointments shall be made from the recommendations of the association.
- (3) The board, immediately upon qualification of the member appointed in each year, shall organize by selecting from its members a chairman.
- (4) Each member of the board shall receive the sum of twelve thousand dollars (\$12,000) per year, payable twice monthly, and reimbursement for actual and necessary expenses incurred in the performance of official duties.
- (5) The board shall have full authority to employ, and discharge, any personnel, including counsel, as it may deem necessary to efficiently administer and enforce the provisions of this chapter, and it shall outline the duties and fix the compensation of such persons, provided that compensation shall be comparable to the salaries paid other state employees, if any, which the board may deem to be doing similar work. The board shall obtain office space, furniture, stationery, and any other proper supplies and conveniences reasonably necessary to carry out the provisions of this chapter. If any items deemed to be reasonably necessary by or which are required by the board are available through vendors under contract with the Commonwealth of Kentucky at less cost than if obtained otherwise, then the items shall be acquired pursuant to the contract. The board shall have full authority to obtain for its members, staff, and employees complete insurance coverage, including, but not limited to, liability and errors and omissions insurance, so long as the insurance concerns the business of the board.
- (6) All fees and charges collected by the board under the provisions of this chapter shall be paid into the State Treasury through the Finance and Administration Cabinet and shall be credited to an agency fund account for the Board of Auctioneers under the provisions of KRS 45.253 and shall be withdrawn or expended as provided in that section, if such payment, credit, withdrawal, or expense provisions do not conflict with any provision of this chapter.
  - (a) The board may establish and collect reasonable fees relating to the administration and enforcement of this chapter for application or other processing costs, on-line service, continuing education provider services, copy and mailing services, or other fees necessary to offset the licensing and processing costs.
  - (b) The total expenses for all purposes and obligations of the board shall not exceed the total fees, charges, fines, penalties, and other income imposed under the provisions of this chapter and paid into the state treasury.
  - (c) The board shall be financially self-sustaining, and if funds permit it may underwrite, within its financial limitations, educational programs for the enlightenment and benefit of all licensees who have paid fees pursuant to this chapter.
- (7) The board shall maintain annually a list of the names and addresses of all licensees regulated by the board. This list shall also contain the names of all persons whose licenses have been suspended or revoked within the preceding year, as well as any other information relative to the enforcement of the provisions of this chapter that the board may deem of interest to the public.

- (8) The board may promulgate administrative regulations in accordance with KRS Chapter 13A as required to fulfill the duties and functions assigned to the board by this chapter.
- (9) A board member shall be automatically removed from the board and a vacancy shall occur when:
  - (a) An auctioneer member of the board ceases to be a licensed auctioneer;
  - (b) A nonlicensed member of the board acquires a license regulated by the board;
  - (c) A board member enters a plea of guilty, an Alford plea, a plea of no contest to, or has been convicted of, any felony, and the time for appeal has passed or the judgment of conviction has been finally affirmed on appeal; or
  - (d) A board member ceases to be a resident of the Commonwealth of Kentucky.

Effective: June 25, 2009

History: Amended 2009 Ky. Acts ch. 70, sec. 5, effective June 25, 2009. -- Amended 1998 Ky. Acts ch. 285, sec. 2, effective July 15, 1998. -- Amended 1992 Ky. Acts ch. 344, sec. 4, effective July 14, 1992. -- Amended 1990 Ky. Acts ch. 170, sec. 3, effective July 13, 1990. -- Amended 1984 Ky. Acts ch. 407, sec. 2, effective July 13, 1984. -- Amended 1982 Ky. Acts ch. 79, sec. 2, effective July 15, 1982; and ch. 450, sec. 76, effective July 1, 1983. -- Amended 1978 Ky. Acts ch. 80, sec. 3, effective June 17, 1978. -- Amended 1976 Ky. Acts ch. 206, sec. 25. -- Amended 1974 Ky. Acts ch. 74, Art. II, sec. 9(1). -- Created 1962 Ky. Acts ch. 251, sec. 5.

2008-2010 Budget Reference. See State/Executive Branch Budget, 2008 Ky. Acts ch. 127, Pt. V, A, 10, at 590; and State/Executive Branch Budget Memorandum, 2008 Ky. Acts ch. 188, at 898 (Final Budget Memorandum, Vol. I, at 9).

### **330.060 Issuance of license -- Conditions -- Examination, fee, exception -- Service of process.**

- (1) Every applicant for licensure shall be at least eighteen (18) years of age, show proof of a high school diploma or equivalent, and, within the preceding five (5) years, shall not have committed any act that constitutes grounds for license suspension or revocation under this chapter.
  - (a) The board may waive the high school diploma or equivalent requirement for an apprentice, licensed prior to 1985, applying for an auctioneer license.
  - (b) Any license issued pursuant to this chapter shall be granted only to a person found to be of good repute, trustworthy, and competent to transact the business for which the license was granted in a manner requisite to safeguarding the interest of the public.
  - (c) Effective July 1, 2010, an applicant for an apprentice auctioneer license shall have successfully completed at least eighty (80) hours of approved classroom instruction from a board-approved auction education provider.
  - (d) The board may waive the eighty (80) hours of approved classroom instruction requirement if the applicant demonstrates sufficient previous auction experience and competency by affidavit or other evidence as required by the board.
- (2) The board is authorized to require information from every applicant to determine the applicant's honesty and truthfulness.
- (3) Every applicant shall successfully complete an examination, conducted by the board or its authorized representative. Every application for examination shall be submitted on board-prepared forms, and each applicant shall furnish pertinent background data as outlined on the forms.
  - (a) To defray the cost of administration of the examination, the board shall require each applicant to remit an examination fee established by administrative regulations promulgated by the board in accordance with KRS Chapter 13A.
  - (b) Examination fees shall be nonrefundable.
  - (c) If the applicant is unable to attend the scheduled exam, the examination fee shall be deferred to the next scheduled administration of the examination.
  - (d) Upon successful completion of the examination, the applicant shall apply for initial licensure within forty-five (45) days of receiving notice of successfully completing the examination.
  - (e) The examination shall be of the scope and wording sufficient in the judgment of the board to establish the competency of the applicant to act as an auctioneer or other licensee regulated by the board.
- (4) If a license has been revoked, suspended, or is allowed to expire without renewal, the board may require the applicant to pass the written examination or complete some form of board-approved auction education before a license may be issued.
- (5) If a license has not been renewed within six (6) months of the expiration date, the board shall require a



person to successfully complete the written examination before a license is issued.

- (6) In addition, every nonresident applicant shall file an irrevocable consent that actions may be commenced against the applicant in any court of competent jurisdiction in the Commonwealth of Kentucky, by the service of any summons, process, or pleadings authorized by law on the authorized representative of the board. The consent shall stipulate and agree that the service of any summons, process, or pleadings on the authorized representative shall be taken and held in all courts to be as valid and binding as if actual service had been made upon the applicant in Kentucky. In case any summons, process, or pleadings are served upon the authorized representative of the board, it shall be by duplicate copies, one (1) of which shall be retained in the office of the board, and the other immediately forwarded by certified mail, return receipt requested, to the last known business address of the applicant against whom the summons, process, or pleadings are directed.

Effective: June 25, 2009

History: Amended 2009 Ky. Acts ch. 70, sec. 6, effective June 25, 2009. -- Amended 1998 Ky. Acts ch. 285, sec. 3, effective July 15, 1998. -- Amended 1992 Ky. Acts ch. 344, sec. 5, effective July 14, 1992. -- Amended 1990 Ky. Acts ch. 170, sec. 4, effective July 13, 1990. -- Amended 1984 Ky. Acts ch. 407, sec. 3, effective July 13, 1984. -- Amended 1982 Ky. Acts ch. 79, sec. 3, effective July 15, 1983. -- Created 1962 Ky. Acts ch. 151, sec. 6.

**330.070 Apprentice auctioneer requirements -- License fee -- Continuing education requirement -- Pocket license -- Duty of auctioneer upon termination of apprentice employment -- Placement of licenses in escrow -- Notice of change of address.**

- (1) An apprentice auctioneer applying for an auctioneer license shall, subject to the provisions of KRS 330.060:
- (a) Possess a current Kentucky apprentice auctioneer license;
  - (b) Serve an apprenticeship for a period of two (2) years as an apprentice auctioneer in Kentucky; and
  - (c) Submit a statement to the board, signed by the principal auctioneer, verifying that the applicant has participated in at least ten (10) auctions during the twenty-four (24) month period prior to application.
- (2) An apprentice auctioneer with an original license issued prior to June 30, 2010, shall be required to successfully complete the auctioneer examination.
- (3) Effective July 1, 2010, an applicant for an apprentice auctioneer license shall be required to successfully complete the auctioneer examination prior to being issued an apprentice license. No further examination shall be required prior to applying for an auctioneer license.
- (a) An apprentice auctioneer shall apply for an auctioneer license after completing the required two (2) year apprenticeship and within five (5) years of being issued an apprentice license.
  - (b) If a licensed apprentice auctioneer does not apply for an auctioneer license within five (5) years of receiving an apprentice license, the apprentice license shall not be renewed.
  - (c) This subsection shall not apply to an apprentice auctioneer licensed prior to June 30, 2010.
- (4) If an applicant for an auctioneer license resides in a state which does not have a current reciprocity agreement with the board, the board may waive the eighty (80) hour education requirement or the apprenticeship requirement, or both, if the applicant demonstrates sufficient previous auction experience and competency by affidavit or by other evidence as required by the board.
- (5) An applicant for an auctioneer license who has previously held an auctioneer license which has been revoked, suspended, or which has expired without renewal may request, and the board may grant, a waiver of the requirement of possession of a current apprentice license.
- (6) Every application for a license issued by the board shall be submitted on forms prepared by the board. Each applicant shall furnish pertinent background data as outlined on those forms.
- (7) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish an initial license fee and annual renewal license fee, neither of which shall exceed one hundred fifty dollars (\$150).
- (a) All licenses shall expire on the thirtieth day of June.
  - (b) Each license shall be renewed on or before the expiration date.
  - (c) In addition to the renewal fee, a late fee shall be established by administrative regulations

promulgated by the board on each license renewed within six (6) months after the expiration date.

- (d) In the absence of any reason or condition which might warrant the refusal of renewing a license, and upon timely receipt of the renewal form and the annual fee, the board shall issue a license for the ensuing year.
- (8)
  - (a) The board may require as a condition precedent to the renewal of any license, that each licensee complete continuing education up to ten (10) hours per license year. The board may impose different continuing education requirements upon different classifications of licenses under this chapter. The continuing education requirements in this subsection shall not apply to those auctioneers licensed prior to January 1, 1980.
  - (b) A licensee who has not completed the required continuing education may, within the time period set forth in subsections (6) and (7) of this section, remit a fee established by administrative regulations promulgated by the board with the applicable renewal fees, and the continuing education reporting requirement shall be deferred to the next annual renewal. If the licensee fails to meet the continuing education requirement for the next annual renewal, the licensee shall successfully complete the examination before renewal of his or her license.
  - (c) The board may require all licensees to complete a six (6) hour board-approved core course once every four (4) years, that includes the core subjects of Kentucky auction statutes and regulations, ethics, and any other subject matter deemed appropriate by the board.
- (9) The board shall prepare and deliver to each licensee a pocket license. The pocket license of the apprentice auctioneer shall contain the name and address of his or her principal auctioneer. The board shall also prepare and deliver a license to each auction house operator.
  - (a) Auction house operators shall display their licenses conspicuously and at all times in the auction house identified on the license.
  - (b) All licensees shall carry their pocket licenses when performing auctioneering tasks, to be shown upon request.
  - (c) A license or pocket license shall be replaced upon the request of the licensee and payment of a replacement fee established by administrative regulations promulgated by the board in accordance with KRS Chapter 13A.
- (10) When an apprentice auctioneer is discharged or voluntarily terminates employment with the auctioneer for any reason:
  - (a) It shall be the immediate duty of the principal auctioneer to deliver to the board a written release of the apprentice auctioneer; and
  - (b) The apprentice auctioneer shall affiliate with a principal auctioneer within thirty (30) days by submitting to the board an affiliation letter signed by the new principal auctioneer and a fee established by administrative regulations promulgated by the board in accordance with KRS Chapter 13A.

An apprentice auctioneer shall not perform any of the acts regulated by this chapter until receiving a new license bearing a new principal auctioneer's name and address.
- (11) A licensee may place his or her license in escrow with the board if the licensee does not engage in any board-regulated auctioneering activity and continues to pay the annual renewal license fee.
  - (a) For each year the license is in escrow, a licensee shall be exempt from the contribution to the auctioneer's education, research, and recovery fund and the continuing education requirement.
  - (b) To reactivate a license in escrow, the licensee shall meet the current year's continuing education requirement and pay a reactivation fee and the annual renewal recovery fee, both of which shall be established by administrative regulations promulgated by the board in accordance with KRS Chapter 13A.
- (12) Notice in writing shall be given to the board by each licensee of any change of principal business location or residence address within ten (10) days of the change, and the board shall issue an updated license for the unexpired period. The board may fine, suspend, or revoke the license of a licensee who does not notify the board of a change of address within ten (10) days. Changing a business a residence address on its records shall entitle the board to collect a fee established by administrative regulations promulgated by

the board in accordance with KRS Chapter 13A.

Effective: June 25, 2009

History: Amended 2009 Ky. Acts ch. 70, sec. 7, effective June 25, 2009. -- Amended 1998 Ky. Acts ch. 285, sec. 4, effective July 15, 1998. -- Amended 1992 Ky. Acts ch. 344, sec. 6, effective July 14, 1992. -- Amended 1990 Ky. Acts ch. 170, sec. 5, effective July 13, 1990. -- Amended 1984 Ky. Acts ch. 407, sec. 4, effective July 13, 1984. -- Amended 1982 Ky. Acts ch. 79, sec. 4, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 80, sec. 4, effective June 17, 1978. -- Amended 1974 Ky. Acts ch. 315, sec. 68. -- Amended 1970 Ky. Acts ch. 120, sec. 18. -- Created 1962 Ky. Acts ch. 251, sec. 7.

**330.095 Reciprocal licensing without examination -- Continuing education requirements.**

- (1) An individual holding an auctioneer license from the proper authority of a state, territory, or possession of the United States of America or the District of Columbia that has licensing requirements equal to or substantially equivalent to the requirements in this state, and where reciprocal licensing privileges are granted to residents of this state, may obtain an auctioneer license without examination and pre-license education if:
  - (a) The board has entered into a valid reciprocal agreement with the proper authority of the state, territory, or possession of the United States of America or the District of Columbia from which the nonresident applicant has a valid license;
  - (b) The applicant submits to the board the completed reciprocal application, including the irrevocable consent described in KRS 330.060, and the license and exam verification from a reciprocal state; and
  - (c) The applicant pays the applicable reciprocal fee:
    1. The initial reciprocal fee shall be the greater of:
      - a. The sum total of the initial license and recovery fees charged by the applicant's reciprocal state to a Kentucky resident for an initial reciprocal license; or
      - b. The sum total of the current initial license and recovery fees assessed by the board to a nonreciprocal Kentucky licensee; and
    2. The renewal reciprocal fee shall be the greater of:
      - a. The sum total of the renewal license and recovery fees charged by the applicant's reciprocal state to a Kentucky resident for a renewal reciprocal license; or
      - b. The sum total of the current renewal license and recovery fees assessed by the board to a nonreciprocal Kentucky licensee.
- (2) If a licensee is issued a Kentucky reciprocal license via a jurisdiction that has continuing education requirements, the Kentucky reciprocal licensee shall be exempt from reporting continuing education. If a licensee is issued a Kentucky reciprocal license via a jurisdiction that does not have a continuing education requirement, the Kentucky reciprocal licensee shall report continuing education pursuant to KRS 330.070.
- (3) Disciplinary sanctions against a reciprocal licensee imposed by any licensure jurisdiction may be grounds for disciplinary action by the board.

Effective: June 25, 2009

History: Amended 2009 Ky. Acts ch. 70, sec. 8, effective June 25, 2009. -- Amended 1998 Ky. Acts ch. 285, sec. 6, effective July 15, 1998. -- Amended 1992 Ky. Acts ch. 344, sec. 8, effective July 14, 1992. -- Amended 1990 Ky. Acts ch. 170, sec. 7, effective July 13, 1990. -- Amended 1984 Ky. Acts ch. 407, sec. 5, effective July 13, 1984. -- Amended 1982 Ky. Acts ch. 79, sec. 7, effective July 15, 1982. -- Created 1972 Ky. Acts ch. 42, sec. 1.

**330.100 Place of business -- Sign to be erected, requirements, exception -- Claims and disputes.**

- (1) Every auctioneer licensed under this chapter shall maintain a definite place of business in the Commonwealth, except that a nonresident holding a valid Kentucky auctioneer license is not required to maintain an active place of business in the Commonwealth if a place of business is maintained in the nonresident's state.
- (2) Every auction house operator licensed under this chapter shall maintain a definite place of business in the Commonwealth, and shall erect and maintain a sign in a conspicuous place on the premises at or near the outside entrance to all fixed locations. The sign shall be written in clear and legible letters of not less than two (2) inches in height, and shall contain the name and license number of the auction house operator, and the name of the auction house, if different than the name of the operator. The sign shall be placed so that it can easily be observed and read by anyone entering the auction house.

- (3) All claims or disputes of auctions conducted in the Commonwealth of Kentucky and auctions of real or personal property located in the Commonwealth of Kentucky shall be adjudicated by the courts of this state.

Effective: June 25, 2009

History: Amended 2009 Ky. Acts ch. 70, sec. 9, effective June 25, 2009. -- Amended 1992 Ky. Acts ch. 344, sec. 9, effective July 14, 1992. -- Amended 1990 Ky. Acts ch. 170, sec. 8, effective July 13, 1990. -- Created 1962 Ky. Acts ch. 251, sec. 10.

**330.110 License suspension, revocation, and other penalties -- Grounds.**

The board may suspend for a period up to five (5) years or revoke the license of any licensee, or levy fines not to exceed two thousand dollars (\$2,000) against any licensee, or place any licensee on probation for a period of up to five (5) years, or require successful passage of any examination administered by the board, or require successful completion of any course of auction study or auction seminars designated by the board, or issue a formal reprimand, or order any combination of the above, for violation by any licensee of any of the provisions of this chapter, or for any of the following causes:

- (1) Obtaining a license through false or fraudulent representation;
- (2) Making any substantial misrepresentation;
- (3) Pursuing a continued and flagrant course of misrepresentation or intentionally making false promises or disseminating misleading information through agents or advertising or otherwise;
- (4) Accepting valuable consideration as an apprentice auctioneer for the performance of any of the acts specified in this chapter, from any person, except his or her principal auctioneer;
- (5) Failing to account for or remit, within a reasonable time, any money belonging to others that comes into the licensee's possession, commingling funds of others with the licensee's own funds, or failing to keep the funds of others in an escrow or trustee account;
- (6) Paying valuable consideration to any person for services performed in violation of this chapter, or procuring, permitting, aiding, or abetting any unlicensed person acting in violation of any of the provisions of this chapter;
- (7) Entering a plea of guilty, an Alford plea, a plea of no contest to, or being convicted of, any felony, and the time for appeal has passed or the judgment of conviction has been finally affirmed on appeal;
- (8) Violation of any provision of this chapter or any administrative regulation promulgated by the board;
- (9) Failure to furnish voluntarily at the time of execution, copies of all written instruments prepared by any licensee to each signatory of the written instrument;
- (10) Any conduct of a licensee which demonstrates bad faith, dishonesty, incompetence, or untruthfulness;
- (11) Any other conduct that constitutes improper, fraudulent, dishonest, or negligent dealings;
- (12) Failure to enter into a binding written auction listing contract with the seller or with the seller's duly authorized agent prior to advertising, promoting, or offering any real or personal property by or at auction;
- (13) Failure to provide a receipt to all persons consigning personal property with any licensee for auction;
- (14) Failure to establish and maintain, for a minimum of five (5) years from final settlement, complete and correct written or electronic records and accounts of all auction transactions, including:
  - (a) Listing contracts, including the name and address of the seller;
  - (b) Written purchase contracts;
  - (c) Descriptive inventory and final bid amounts of all items or lots offered;
  - (d) Buyer registration records; and
  - (e) Settlement records, including all moneys received and disbursed and escrow account activity; or
- (15) Failure of any licensee to present any auction-related information, including but not limited to advertisements, listing contracts, purchase contracts, clerking records, buyer registration records, settlement records, escrow account information, license, or any other auction-related information, subsequent to a request by a board compliance officer or board counsel.

Effective: June 25, 2009

History: Amended 2009 Ky. Acts ch. 70, sec. 11, effective June 25, 2009. - Amended 1998 Ky. Acts ch. 285, sec. 7, effective July 15, 1998. -- Amended 1992 Ky. Acts ch. 344, sec. 10, effective July 14, 1992. - Amended 1990 Ky. Acts ch. 170, sec. 9, effective July 13, 1990. - Amended 1984 Ky. Acts ch. 407, sec. 6, effective July 13, 1984. -- Created 1962 Ky. Acts ch. 251, sec. 11.

**330.115 Complaints against licensee -- Answer by licensee.**

- (1) All complaints against licensees shall be submitted to the board on forms furnished by the board. The complaint shall state facts which, if true, would present a prima facie case against the licensee.
- (2) The board shall send the answer form and a copy of the complaint to the licensee by certified mail. The completed answer form shall be returned to the board within twenty (20) working days from the date of receipt. The board shall forward a copy of the answer to the complainant.

Effective: June 25, 2009

History: Amended 2009 Ky. Acts ch. 70, sec. 12, effective June 25, 2009. -- Created 1984 Ky. Acts ch. 407, sec. 7, effective July 13, 1984.

**330.120 Investigation of complaint -- Conditions -- Disposition hearing.**

- (1) The board may upon its own motion, and shall upon the verified written complaint of any person, investigate the actions of any licensee or any person who assumes to act as a licensee if the complaint, or complaint together with other evidence presented in connection with it, presents a prima facie case of a violation of this chapter. If a prima facie case is not established or the violation is deemed inconsequential, the board may immediately dismiss the complaint.
- (2) If, after an investigation that includes opportunity for the licensee to respond, the board determines that a violation took place but was not of a serious nature, it may issue a written admonishment to the licensee. A copy of the admonishment shall be placed in the file of the licensee. The licensee shall have the right to file a response to the admonishment within thirty (30) days of its receipt and to have the response placed in the licensure file. The licensee may alternatively, within thirty (30) days of the receipt, file a request for hearing with the board. Upon receipt of this request, the board shall set aside the written admonishment and set the matter for hearing under the provisions of KRS Chapter 13B.

Effective: June 25, 2009

History: Amended 2009 Ky. Acts ch. 70, sec. 13, effective June 25, 2009. -- Amended 1998 Ky. Acts ch. 285, sec. 8, effective July 15, 1998. -- Amended 1992 Ky. Acts ch. 344, sec. 11, effective July 14, 1992. -- Amended 1990 Ky. Acts ch. 170, sec. 11, effective July 13, 1990. -- Created 1962 Ky. Acts ch. 251, sec. 12.

**330.130 Hearing before imposition of disciplinary action -- Notice -- Appeal.**

- (1) Before denying an application for license or before imposing any disciplinary action authorized under KRS 330.110, the board shall set the matter for an administrative hearing, if a hearing is requested by the applicant or licensee. The hearing shall be conducted in accordance with KRS Chapter 13B. If the subject of the hearing is an apprentice auctioneer, the board shall also provide notification of the hearing to the auctioneer employing him or whose employ he is about to enter, by sending notice by certified mail, return receipt requested, to the auctioneer's last known business address.
- (2) Any party aggrieved by a final order of the board refusing to grant a license or suspending or revoking a license may appeal the final order to the Circuit Court of the county in which the applicant or licensee resides, in accordance with KRS Chapter 13B.

Effective: June 25, 2009

History: Amended 2009 Ky. Acts ch. 70, sec. 14, effective June 25, 2009. -- Amended 1996 Ky. Acts ch. 318, sec. 303, effective July 15, 1996. -- Amended 1980 Ky. Acts ch. 114, sec. 92, effective July 15, 1980. -- Amended 1974 Ky. Acts ch. 315, sec. 70. -- Created 1962 Ky. Acts ch. 251, sec. 13.

**330.170 Duration and effect of revocation of license.**

- (1) Any licensee whose license has been revoked shall not be issued another license for a period of five (5) years from the date of revocation.
- (2) The revocation of an auctioneer's license shall automatically suspend every apprentice auctioneer's license granted to any person employed or supervised by the auctioneer whose license has been revoked. The apprentice auctioneer may retain his license by transferring to the employment of another licensed auctioneer within thirty (30) days.

Effective: June 25, 2009

History: Amended 2009 Ky. Acts ch. 70, sec. 15, effective June 25, 2009. -- Amended 1992 Ky. Acts ch. 344, sec. 13, effective July 14, 1992. -- Amended 1990 Ky. Acts ch. 170, sec. 12, effective July 13, 1990. -- Amended 1978 Ky. Acts ch. 80, sec. 5, effective June 17, 1978. -- Created 1962 Ky. Acts ch. 251, sec. 17.

**330.180 Seal -- Records, as evidence, public.**

The board shall adopt a seal by which it shall authenticate its proceedings. Copies of all records and papers in the office of the board, duly certified and authenticated by the seal of the board, shall be received in evidence in all courts equally and with like effect as the original. Public inspection of records kept in the office of the board under the authority of this chapter shall be permitted by applicable provisions of the Open Records Act of the Commonwealth of Kentucky, KRS 61.870 to 61.884.

Effective: June 25, 2009

History: Amended 2009 Ky. Acts ch. 70, sec. 16, effective June 25, 2009. -- Amended 1990 Ky. Acts ch. 170, sec. 13, effective July 13, 1990. -- Created 1962 Ky. Acts ch. 251, sec. 18.

**330.190 Proof of license required to recover fees by court action -- No right of recovery by apprentice auctioneer, exception.**

- (1) No person, engaged in the business of or acting in the capacity of any licensee under this chapter shall bring or maintain any action in the courts of the Commonwealth for the collection of compensation for any services performed as a licensee without first proving that he or she was duly licensed at the time the alleged cause of action arose.
- (2) No apprentice auctioneer shall have the right to institute a suit in his or her own name for the recovery of a commission, fee, or compensation for services as an apprentice auctioneer, but any such act shall be instituted and brought by the licensed auctioneer employing an apprentice auctioneer; provided, however, that this subsection shall not be construed so as to prevent a licensed apprentice auctioneer from suing his or her employing auctioneer for any compensation, fees, or commissions due from the auctioneer.

Effective: June 25, 2009

History: Amended 2009 Ky. Acts ch. 70, sec. 17, effective June 25, 2009. -- Amended 1992 Ky. Acts ch. 344, sec. 14, effective July 14, 1992. -- Amended 1990 Ky. Acts ch. 170, sec. 14, effective July 13, 1990. -- Created 1962 Ky. Acts ch. 251, sec. 19.

**330.192 Auctioneer's education, research, and recovery fund -- Annual fees, charges, and assessments -- Purpose -- Use -- Coverage of licensees.**

- (1)
  - (a) There is hereby created and established in the State Treasury the auctioneer's education, research, and recovery fund.
  - (b) In addition to the license fees established in KRS 330.070, and KRS 330.095, the board may assess each licensee a renewal recovery fee established by administrative regulations promulgated by the board in accordance with KRS Chapter 13A. Each initial applicant shall pay an initial recovery fee established by administrative regulations promulgated by the board in accordance with KRS Chapter 13A.
- (2) The purposes of the auctioneer's education, research, and recovery fund shall be as follows:
  - (a) When a licensee has been duly found guilty of violating one (1) or more of the provisions of this chapter, or one (1) or more of the administrative regulations duly promulgated by the board, and upon the conclusion of a final order entered by the board or by the courts, if appealed, the board is authorized to pay to the aggrieved party an amount not to exceed fifty thousand dollars (\$50,000) against any one (1) licensee, if the licensee has refused to pay the claim within twenty (20) days of entry of a final order and provided further that the amount or amounts of money in question are certain and liquidated.
  - (b) The board shall maintain a minimum of five hundred thousand dollars (\$500,000) for recovery and guaranty purposes. These funds may be invested and reinvested in the same manner as funds of the State Employees' Retirement System and the interest from said investments shall be deposited to the credit of the research and recovery fund, or, in the discretion of the board, to the agency fund account as set out in KRS 330.050(6). Sufficient liquidity, however, shall be maintained so that money is available to satisfy all claims which may be processed through the board by means of administrative hearing as outlined in this chapter.
  - (c) The board may use funds in excess of five hundred thousand dollars (\$500,000), whether from the auctioneer's education, research, and recovery fund fees or accrued interest thereon, for any of the following purposes:

1. To advance education and research in the auction field for the benefit of those licensed under the provisions of this chapter and to improve and make more efficient the auction industry;
  2. To underwrite educational seminars, caravans, and other forms of educational projects for the general benefit of licensees;
  3. To establish an auction chair or courses at Kentucky state institutions of higher learning for the purpose of making college or university level courses available to licensees and the general public;
  4. To contract for a particular research project in the auction field for the Commonwealth of Kentucky;
  5. To sponsor, contract for, and to underwrite all other educational and research projects that contribute to the advancement of the auction field in Kentucky;
  6. To cooperate with associations of auctioneers and any other groups for the enlightenment and advancement of Kentucky licensees;
  7. To increase the level of the auctioneer's education, research, and recovery fund above five hundred thousand dollars (\$500,000); and
  8. To augment the regular trust and agency account of the board.
- (3) (a) If a licensee is found guilty of one (1) or more provisions of this chapter or of violating one (1) or more of the administrative regulations of the board, and if the amount of the money lost by the aggrieved party or parties is in dispute or cannot be determined accurately, then the amount of damages shall be determined by the Circuit Court in the county where the alleged violation took place, provided that the board has previously determined that a violation of the license laws or of the administrative regulations has occurred and a final order has been entered.
- (b) If an order has been entered and the license rights of the licensee have been finally adjudicated, then the local Circuit Court shall determine the monetary damages due from the aforesaid violation or violations.
- (c) When a final order has been entered by the Circuit Court, Court of Appeals, or Supreme Court, and upon certification to the board, the aggrieved party or parties shall be paid an amount not to exceed fifty thousand dollars (\$50,000) by the board, and the license held by the licensee against whom the claim was made by the aggrieved party shall be suspended at least until the licensee has reimbursed the auctioneer's education, research, and recovery fund for all amounts paid to the aggrieved party due to the violation of the licensee.
- (d) When, upon the final order of the court, the board has paid from the auctioneer's education, research, and recovery fund any sum to the aggrieved party, the board shall be subrogated to all of the rights of the aggrieved party to the extent of the payment and the aggrieved party shall, to the extent of the payment, assign his right, title, and interest in the judgment to the board.
- (e) All claims for monetary damages or relief from the auctioneer's education, research, and recovery fund shall be made in writing and submitted to the board within twelve (12) months of the act of the auctioneer giving rise to the loss. Failure to file a claim within the twelve (12) month period shall bar the claim. Additional evidence shall be submitted by the claimant if required by the board.
- (f) Notwithstanding any other provisions of this chapter, no unreimbursed amount greater than fifty thousand dollars (\$50,000) shall be paid by the board on account of any one (1) licensee, no matter over how long a time, or for how many claims, and no matter what the number of claimants be or the size of such claims, individually or in the aggregate. Should the licensee reimburse the fund for all amounts paid, then future claims timely filed with the board concerning different matters may be received pursuant to this section.
- (g) No claims shall be approved under this section for amounts which, in the aggregate, exceed the maximum payable on account of any one (1) licensee in effect at the time of the act or acts of the licensee giving rise to the claims, except to the extent of said maximum. Statutory increases in the maximum set out in this section do not apply retroactively.
- (4) All categories of licensees under this chapter are covered under the provisions of this section for the

benefit and protection of the public.

- (5) This section is not intended to substitute for, circumvent, or duplicate other remedies existing at law or otherwise for claimants or potential claimants, but constitutes a last resort for aggrieved persons who would not, but for the provisions of this section, be able to recover their losses by any other means available. The board shall have full discretion to require that claimants exhaust all other remedies prior to proceeding under this section, including, but not limited to, the remedy of obtaining a judgment by all diligent and appropriate means.

Effective: June 25, 2009

History: Amended 2009 Ky. Acts ch. 70, sec. 18, effective June 25, 2009. -- Amended 1998 Ky. Acts ch. 285, sec. 9, effective July 15, 1998. -- Amended 1992 Ky. Acts ch. 344, sec. 15, effective July 14, 1992. -- Amended 1990 Ky. Acts ch. 170, sec. 15, effective July 13, 1990. -- Amended 1984 Ky. Acts ch. 407, sec. 9, effective July 13, 1984. -- Created 1982 Ky. Acts ch. 79, sec. 5, effective July 15, 1982.

2008-2010 Budget Reference. See State/Executive Branch Budget, 2008 Ky. Acts ch. 127, Pt. V, A, 11, at 590; and State/Executive Branch Budget Memorandum, 2008 Ky. Acts ch. 188, at 898 (Final Budget Memorandum, Vol. I, at 9).

### **330.200 Municipal right to license auctioneers and auction house operators.**

No municipality or other political subdivision shall regulate, tax, or license any licensee except for those administrative regulations, taxes, or licenses which may be reasonably imposed or required among all persons engaged in business generally.

Effective: July 14, 1992

History: Amended 1992 Ky. Acts ch. 344, sec. 16, effective July 14, 1992. -- Amended 1990 Ky. Acts ch. 170, sec. 16, effective July 13, 1990. -- Amended 1978 Ky. Acts ch. 80, sec. 6, effective June 17, 1978. -- Created 1962 Ky. Acts ch. 251, sec. 20.

### **330.210 Sale of horses by auction.**

- (1) Notwithstanding any contrary provisions of law and in furtherance of the policies set forth in KRS 355.2-328, at any auction sale of horses, the auctioneer:
- (a) May receive bids from the seller, consignor, or his agent, disclosed or undisclosed, if notice has been given in the terms and conditions governing the sale, or otherwise, that liberty for such bidding has been reserved by seller;
  - (b) Shall conduct the sale with respect to each lot or parcel on a with-reserve basis unless the seller has authorized the auctioneer, in writing, to conduct the sale on a without-reserve basis, in which event the auctioneer shall announce, in explicit terms, that the goods are being sold without reserve; and
  - (c) Shall not be required to announce at any with-reserve sale when the reserve is attained.
- (2) Notwithstanding any other provision of this chapter, the following shall not apply to auctions or auctioneers participating in an auction regarding the sale, lease, or exchange of an equine as defined in KRS 230.357(1):
- (a) The advertising requirements set forth in KRS 330.230(1), (2), and (7);
  - (b) The causes justifying disciplinary action set forth in KRS 330.110(12), (13), (14), and (15); or
  - (c) The provisions regulating absolute auctions and reserve auctions set forth in KRS 330.220(5) and (7).

Effective: June 25, 2009

History: Amended 2009 Ky. Acts ch. 70, sec. 19, effective June 25, 2009. -- Created 1990 Ky. Acts ch. 361, sec. 1, effective July 13, 1990.

### **330.220 Lots or parcels subjects of separate sales -- When auction is complete -- "Absolute auction" defined -- Presumption of reserve auction -- Bids by seller -- Avoidance of sale -- Prohibitions.**

- (1) If real or personal property is offered in lots or parcels in a sale by auction, each lot or parcel shall be the subject of a separate sale. This subsection shall not preclude real or personal property from being offered for bidding individually or in some form or combination.
- (2) Unless otherwise provided in the conditions of sale for auctions regarding horses or any interests therein, a sale by auction is complete when the auctioneer so announces by the fall of the hammer, announcing the item sold, and the successful bidder's identification or in other customary manner. If it becomes immediately apparent at the close of the bidding that the auctioneer and a bid assistant or ringman have



acknowledged the same bid from different bidders, the auctioneer may continue the bidding between the disputed bidders. When a bid is made while the auctioneer is in the process of completing the sale by auction, the auctioneer may continue the bidding or declare the real or personal property sold under the bid on which the hammer was falling.

- (3) No auction shall be advertised as "absolute" nor shall any advertising contain the words "absolute auction" or the word "absolute" or words with similar meaning nor shall any licensee offer or sell any real or personal property at absolute auction unless:
- (a) There are no liens or encumbrances on the real or personal property, except property tax obligations, easements, or restrictions of record, in favor of any person, firm, or corporation other than the seller, or unless each and every holder of each and every lien and encumbrance, by execution of the auction listing contract, or otherwise furnishing to the auctioneer written evidence of a binding commitment therefore, shall have agreed to the unqualified acceptance of the highest bid for the property, without regard to the amount of the highest bid or the identity of the high bidder; or, alternatively, that a financially responsible person, firm, or corporation, by execution of the auction listing contract or by otherwise furnishing to the auctioneer written evidence of a binding commitment therefore, shall have absolutely guaranteed the forthwith and complete discharge and satisfaction of any and all liens and encumbrances immediately after the sale or at the closing, without regard to the amount of the highest bid received, or the identity of the high bidder; and
  - (b) There is the bona fide intention at the time of the advertising and at the time of the auction to transfer ownership of the real or personal property, regardless of the amount of the highest and last bid, to the high bidder, that intent existing without reliance on any agreement that any particular bid or bid level must be made or be reached, below which level the real or personal property would not be transferred to the high bidder; and
  - (c) The auction listing contract contains a binding requirement that the auction be conducted without reserve, and includes an acknowledgment that the seller, or anyone acting upon behalf of the seller, shall not bid at the absolute auction, or otherwise participate in the bidding process.
- (4) Compliance with subsection (3) of this section shall not prohibit:
- (a) A secured party or other lienholder who is not the seller from bidding at an absolute auction, providing that such bidding does not constitute, nor is it tantamount to the direct or indirect establishment or agreement to the establishment of a reserve price on the real or personal property by the seller or by the auctioneer, or by anyone aiding or assisting, or acting upon behalf of, the seller or the auctioneer; or
  - (b) Any individual party to the dissolution of any marriage, partnership, or corporation from bidding as an individual entity apart from the selling entity, on real or personal property being sold at auction pursuant to that dissolution; or
  - (c) Any individual party or heir of a deceased person's bona fide estate from bidding as an individual entity, apart from the selling entity, on real or personal property being offered at auction pursuant to that estate settlement; or
  - (d) The inclusion of nonmisleading advertising of certain real or personal property to be sold at "absolute auction" and the nonmisleading advertising of certain real or personal property to be offered at auction with reserve, within the same advertisement, or for sale at the same date and place, providing that advertisement shall make clearly apparent through equal or appropriate emphasis, which real or personal property is being offered by each method.
- (5) Any auction sale is, without requirement of announcement at any time, presumed to be with reserve unless the real or personal property is in explicit terms offered at absolute auction. An auction without reserve means an absolute auction. An auction with reserve means the real or personal property may be offered subject to the seller's confirmation or subject to a certain reserve price. In an auction with reserve, the auctioneer may withdraw the real or personal property at any time until he or she announces completion of the sale. In an absolute auction, after the auctioneer calls for bids on an article, lot, or parcel, that article, lot, or parcel shall not be withdrawn unless no bid is made within a reasonable time. At both reserve auctions and without reserve auctions, the auctioneer may establish reasonable bid

increments once an opening bid has been offered.

- (6) (a) The provisions of this chapter shall not prohibit any licensee from bidding on his or her own behalf at any auction sale, whether absolute or with reserve, if his or her option to do so has been fully disclosed, including disclosure to the seller.
- (b) Except as provided in subsection (4) of this section, the seller may not bid at an absolute auction, nor may anyone bid upon his or her behalf. No licensee shall knowingly receive a bid by or on behalf of the seller at an absolute auction.
- (c) Bids may be made by the seller, or upon the seller's behalf, at any auction with reserve, provided that full disclosure has clearly been made that liberty for bidding is retained. No licensee shall knowingly receive a bid in the absence of full disclosure. If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures a bid and notice has not been clearly given that liberty for bidding is reserved, the buyer may avoid the sale or take the real or personal property at the price of the last good faith bid prior to the completion of the sale.
- (d) There shall be no requirement that the reserve be announced when it is attained.
- (e) Nothing in this subsection shall be construed to alter or diminish the provisions of KRS 330.210.
- (7) (a) At any absolute auction, any advertisement or representation of a minimum or suggested starting bid is prohibited.
- (b) At any reserve auction, any advertisement or representation of a minimum or suggested starting bid is prohibited unless:
  - 1. The minimum or suggested starting bid advertised or represented is sufficient to satisfy the auction listing contract stated reserve or confirmation amount; and
  - 2. The auction listing contract contains a binding acknowledgment by the seller that permission has been granted for disclosure.

Effective: June 25, 2009

History: Amended 2009 Ky. Acts ch. 70, sec. 20, effective June 25, 2009. -- Amended 1992 Ky. Acts ch. 344, sec. 17, effective July 14, 1992. -- Created 1990 Ky. Acts ch. 170, sec. 10, effective July 13, 1990.

### **330.230 Auction advertising.**

- (1) Any advertising pertaining to an auction shall include the name of the managing principal auctioneer for the auction and indicate that he or she is an auctioneer, except that any advertising pertaining to an auction conducted at an auction house operated by a licensed auction house operator shall include the name of the auction house operator and indicate that he or she is an auction house operator or "AHO." The advertising requirements in this subsection shall not apply to directional signs if a sign with the name of the managing principal auctioneer for the auction or the auction house operator is placed so that it can be easily observed and clearly read by anyone entering the auction site.
- (2) The existence and amount of any buyer's fee or buyer's premium shall be clearly disclosed in all terms and conditions included in any advertisements for a particular auction and in all terms and conditions presented or made available prior to the start of a particular auction.
- (3) (a) An auction shall not be advertised as "Court Ordered" or use similar wording implying court action unless:
  - 1. At least seventy-five percent (75%) of the items or lots in the auction are being offered pursuant to one (1) or more federal, state, or local court orders; and
  - 2. The items or lots were clearly not purchased or attained for the purpose of resale at auction.
- (b) The advertising shall clearly contain an explanation of the court order including identification of the court.
- (c) If less than one hundred percent (100%) of the items or lots being offered at the auction are pursuant to one (1) or more court orders, then the advertising shall clearly indicate that the auction is "With Additions" or use similar wording.
- (d) This subsection shall not prohibit clear, nonmisleading advertising of the inclusion of specific real or personal property being offered pursuant to a federal, state, or local court order in an auction if that real or personal property is offered pursuant to a federal, state, or local court order and was clearly not purchased or attained for the purpose of resale at auction.

- (4) (a) An auction shall not be advertised as a "Bankruptcy Auction" or "Items from Bankruptcy" or use similar wording or any combination thereof unless:
  - 1. The auction consists of at least seventy-five percent (75%) of items or lots to be offered for one (1) or more open and working bankruptcies under the jurisdiction of the United States Bankruptcy Court;
  - 2. The items or lots were clearly not purchased or attained for the purpose of resale at auction; and
  - 3. The advertising clearly includes the United States Bankruptcy Court case number or numbers.
- (b) If less than one hundred percent (100%) of the items or lots being offered at the auction are for one (1) or more bankruptcies, then the advertising shall clearly indicate that the auction is "With Additions" or use similar wording.
- (c) This subsection shall not prohibit clear, nonmisleading advertising of the inclusion of specific real or personal property being offered for a bankruptcy in an auction if that real or personal property is being offered for one (1) or more open and working bankruptcies under the jurisdiction of the United States Bankruptcy Court, was not purchased or attained for the purpose of resale at auction, and the advertising clearly includes the United States Bankruptcy Court case number or numbers.
- (5) (a) An auction shall not be advertised as a "Seized Property Auction," "Confiscated Property Auction," or "Forfeiture Property Auction" or utilize similar wording or any combination thereof implying governmental action unless:
  - 1. The auction contains at least seventy-five percent (75%) of the items or lots to be offered pursuant to one (1) or more federal, state, or local governmental actions in which the real or personal property is being offered directly for the federal, state, or local governmental entity;
  - 2. The items or lots were clearly not purchased or attained for the purpose of resale at auction; and
  - 3. The advertising clearly contains an explanation of the governmental action, including identification of the governmental entity.
- (b) If less than one hundred percent (100%) of the items or lots being offered at the auction are from one (1) or more governmental actions, then the advertising shall clearly indicate that the auction is "With Additions" or use similar wording.
- (c) This subsection shall not prohibit clear, nonmisleading advertising of the inclusion of specific real or personal property being offered pursuant to a federal, state, or local governmental action in an auction if the real or personal property is offered directly for a federal, state, or local governmental entity and was clearly not purchased or attained for the purpose of resale at auction.
- (6) (a) An auction shall not be advertised as a "Liquidation Auction," "Surplus Auction," "Inventory Reduction Auction," or "Going Out of Business Auction" or use similar wording or any combination thereof unless:
  - 1. The auction contains at least seventy-five percent (75%) of the items or lots to be offered for one (1) or more liquidation, surplus, inventory reduction, or going out of business situations in which the real or personal property belongs to a company or other business entity and is being offered as "out of stock"; and
  - 2. The items or lots were clearly not purchased or attained for the purpose of resale at auction.
- (b) If less than one hundred percent (100%) of the items or lots being offered at the auction are from one (1) or more liquidation, surplus, inventory reduction, or going out of business situations, then the advertising shall clearly indicate that the auction is "With Additions" or use similar wording.
- (c) This subsection shall not prohibit clear, nonmisleading advertising of the inclusion of specific real or personal property being offered for a liquidation, surplus, inventory reduction, or going out of business situation, or similar wording or any combination thereof, in an auction if the real

or personal property is being offered for a liquidation, surplus, inventory reduction, or going out of business situation in which the real or personal property belongs to a company or other business entity, is being offered as "out of stock," and was clearly not purchased or attained for the purpose of resale at auction.

- (7) (a) An auction shall not be advertised as an "Estate Auction," "Estate Settlement," or "To Settle the Estate of ... Auction" or use similar wording or any combination thereof unless:
  - 1. At least seventy-five percent (75%) of the items or lots in the auction are being offered for one (1) or more estates in which the real or personal property belongs to the estate of one (1) or more deceased persons and is being offered by the direction and authority of the authorized executor or administrator, or by court order, or by the direction and authority of one (1) or more direct heirs; and
  - 2. The items or lots were clearly not purchased or attained for the purpose of resale at auction.
- (b) If less than one hundred percent (100%) of the items or lots being offered at the auction are from one (1) or more estates, then the advertising shall clearly indicate that the auction is "With Additions" or use similar wording.
- (c) This subsection shall not prohibit clear, nonmisleading advertising of the inclusion of real or personal property offered for an estate in an auction if the real or personal property is being offered for an estate as set forth in this subsection.
- (8) (a) An auction shall not be advertised as a "Living Estate Auction" or "To Settle the Living Estate of ... Auction" or use similar wording or any combination thereof unless:
  - 1. At least seventy-five percent (75%) of the items or lots in the auction are being offered for one (1) or more living estates in which the real or personal property belongs to a household that is in transition due to a life-changing situation, including but not limited to one (1) or more members of the household moving into a retirement home, nursing home, or assisted living home or combining the household with another; and
  - 2. The items or lots were clearly not purchased or attained for the purpose of resale at auction.
- (b) If less than one hundred percent (100%) of the items or lots being offered at the auction are from one (1) or more living estates, then the advertising shall clearly indicate that the auction is "With Additions" or use similar wording.
- (c) This subsection shall not prohibit clear, nonmisleading advertising of the inclusion of real or personal property being offered for a living estate in an auction if the real or personal property is being offered for a living estate pursuant to this subsection.

Effective: June 25, 2009

History: Created 2009 Ky. Acts ch. 70, sec. 10, effective June 25, 2009.

### **330.990 Penalties.**

- (1) Any person engaging in auction activities regulated by this chapter without a license shall be guilty of:
  - (a) For the first offense, a violation with a fine up to two hundred fifty dollars (\$250);
  - (b) For the second offense, a Class B misdemeanor with a fine up to two hundred fifty dollars (\$250) and up to ninety (90) days imprisonment; and
  - (c) For the third and subsequent offenses, a Class A misdemeanor with a fine up to five hundred dollars (\$500) and up to twelve (12) months imprisonment.
- (2) The board or its authorized representative may apply for injunctive relief to the Circuit Court of the county in which the alleged violation occurred to enjoin any person or entity from committing an act in violation of this chapter. The injunction proceedings shall be in addition to, and not in lieu of, all penalties and other remedies in this chapter. In an action for injunction, the board may demand and recover a civil penalty of fifty dollars (\$50) per day for each violation, reasonable attorney's fees, and court costs.

Effective: June 25, 2009

History: Amended 2009 Ky. Acts ch. 70, sec. 21, effective June 25, 2009. -- Amended 1978 Ky. Acts ch. 80, sec. 7, effective June 17, 1978. -- Created 1962 Ky. Acts ch. 251, sec. 21.

# Kentucky Administrative Regulations

## **201 KAR 3:005. Name required on advertising.**

Section 1. Any advertisements pertaining to a particular auction sale must contain the name of the principal auctioneer and indicate that he is an auctioneer.

## **201 KAR 3:025. Reciprocity requirements.**

Section 1. Due to the fact that some states do not require licensees to serve an apprenticeship, reciprocity with any state that does not require an apprenticeship shall be granted only after a licensee in that state who is a nonresident of Kentucky has held his license for a minimum of one (1) year.

## **201 KAR 3:035. Real estate sales by auction.**

Section 1. Pursuant to an Opinion of the Attorney General, OAG-759, dated October 20, 1965, which held that a licensed real estate broker may not sell real estate at auction without an auctioneer's license; and a licensed auctioneer may not sell real estate at auction without a real estate broker's license, it shall be considered improper dealing for an auctioneer to engage in any practice to obtain or negotiate a contract for the sale of real estate at auction, or advertise, or conduct a sale of real estate at auction without a license issued by the Kentucky State Real Estate Commission. However, nothing contained in this administrative regulation shall prevent a licensed real estate broker and a licensed auctioneer from participating jointly in such transactions for the sale of real estate at auction.

## **201 KAR 3:045. Recordkeeping and accounting.**

RELATES TO: KRS 330.110(5)

STATUTORY AUTHORITY: KRS 330.050(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 330.050(8) authorizes the Board of Auctioneers to promulgate administrative regulations concerning recordkeeping and accounting. This administrative regulation establishes requirements to protect the public through adequate recordkeeping and accounting.

Section 1. Proceeds of a personal property auction not disbursed to the owner on auction day shall be deposited in an auction escrow account by the auctioneer or auction firm no later than three (3) banking days following the date of auction or sale of the goods, whichever occurs first.

Section 2. Auctioneers and auction firms shall use federally insured depositories in the Commonwealth of Kentucky.

Section 3. Proceeds due from the sale of goods, other than real property, shall be disbursed to the owner no later than thirty (30) days after the date of each auction.

section 4. Funds from a real estate auction shall be held in escrow until settlement in accordance with the agreement of sale.

Section 5. If the owner's goods are not sold in a single auction, proceeds due shall be disbursed to the owner within thirty (30) days after each auction for goods, other than real property, or in accordance with the agreement of sale for the sale of real property. Notice shall be given to the owner of the tentative date of auction of the remaining goods.

Section 6. The auction escrow account shall be used solely for the preservation and guarantee of auction proceeds until disbursed at settlement. Funds for any other purpose shall not be commingled with the auction escrow account. Moneys due to the auctioneer or auction firm shall not be withdrawn from the auction escrow account until final settlement is made with the owner.

Section 7. Auction records, including lists of buyers and their addresses, and clerk sheets showing the items sold including the buyers' numbers or names and the selling prices, and the final settlement papers, shall be retained for a period of five (5) years from the date of settlement. These business records shall be available for inspection by the board or its designees. (5 Ky.R. 695; eff. 6-6-79; 37 Ky.R. 2891; 38 Ky.R 736; eff. 11-4-11.)

## **201 KAR 3:055. Apprenticeship residency requirements.**

Section 1. In the absence of a showing of special circumstances satisfactory to the board, no principal auctioneer shall sponsor an apprentice whose residence is located outside a fifty (50) mile radius of the principal auctioneer's main or branch office.

**201 KAR 3:065. Maintaining a license while on active military duty.**

Section 1. Any individual holding a valid apprentice or principal Kentucky auctioneer license who enters the military service of the United States shall not be required to contribute to the Auctioneer Education Research and Recovery Fund or maintain his license during the period that he is on active duty for said military service. Within sixty (60) days of such individual's honorable discharge from the service, he may request reinstatement of his license and said request shall be granted by the board.

**201 KAR 3:090. Administrative Fees for Applications and Services.**

Section 1. License Application and Renewal Fees.

- (1) The license fee for each new applicant with the Kentucky Board of Auctioneers shall be \$100.
- (2) The license renewal fee shall be paid as of June 30th of each year.
  - (a) The license renewal fee shall be \$100 if paid by June 30th of each year.
  - (b) The license renewal fee during the six (6) month grace period after June 30th shall be \$100, in addition to a late fee of \$100.
  - (c) The license renewal fee after the six (6) month grace period, but paid prior to June 30th of the following year, shall be \$100, in addition to a late fee of \$100.
- (3) The license renewal and late fees for apprentice auctioneers shall be equal to the fees set forth in subsection (2) of this section.

Section 2. Late Continuing Education Completion. A licensee who has failed to complete the required continuing education credits in the time period set forth by KRS 330.070 shall remit a fee of \$300, and in addition, shall complete twice the amount of continuing education credits set forth by statute within the following year.

Section 3. Replacement of License or Pocket License.

- (1) The fee for replacement of a license shall be fifteen (15) dollars.
- (2) The fee for replacement of a pocket license shall be fifteen (15) dollars.

Section 4. Reactivation of License. The fee to reactivate a license which has previously been placed in escrow status shall be \$100. In addition, the licensee shall have completed the continuing education credits set forth by KRS 330.070 for the current year.

Section 5. Change of Address Fees.

- (1) The fee for a Residential Change of Address shall be fifteen (15) dollars.
- (2) The fee for a Business Change of Address shall be fifteen (15) dollars.

Section 6. Education, Research, and Recovery Fund. The Kentucky Board of Auctioneers may assess each new applicant and each renewal licensee an initial recovery fee and a renewal recovery fee, respectively, of thirty (30) dollars per year for the Education, Research, and Recovery Fund.